

7 May 2007  
PRESS STATEMENT



**EUROPEAN COMMISSION DECIDES TO OPEN EC TREATY INFRINGEMENT  
PROCEDURES AGAINST 9 EU MEMBER STATES BECAUSE OF  
DISCRIMINATORY TAXATION OF DIVIDEND AND INTEREST PAYMENTS TO  
FOREIGN EU PENSION FUNDS**

The European Commission announced today that it has opened infringement proceedings against 9 EU Member States for their allegedly discriminatory taxation of dividend and interest payments to foreign EU pension funds, while other Member States are still under investigation. The decision follows complaints lodged with the Commission in December 2005 by the European Federation for Retirement Provision ([EFRP](#)).

The 9 Member States involved, the Czech Republic, Denmark, Lithuania, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden, have been issued with letters of formal notice, which is the first step of the infringement procedure under Article 226 of the EC Treaty. They must reply to the Commission within two months.

The Commission's decision is good news for the European pensions industry. Should the European Court of Justice eventually decide to follow the Commission's reasoning - which is likely given its recent case law in the field of direct taxation - pension funds which have filed claims in a timely and correct manner, should be granted a refund regarding withholding tax on dividends and interest paid and levied in other Member States in breach of the EC Treaty. To safeguard their rights, pension funds could also file new reclaim requests.

EFRP concluded in December 2005 that a large number of Member States discriminate against foreign pension funds as they are subject to higher (withholding) taxes on dividends and interest than domestic pension funds.

Most Member States exempt their domestic pension funds from any corporation and/or income tax. In addition, they usually exempt at source any withholding tax on dividend and interest paid to domestic pension funds. Even where there is no such exemption at source they normally have a refund procedure, by which the pension fund can claim back the withholding tax paid.

However, foreign pension funds may not qualify for the relief at source or the refund procedure because the State levying the withholding tax refuses the same treatment to foreign pension funds as to the domestic funds. The outcome is that

foreign pension funds pay higher taxes on interest or dividends than domestic pension funds.

If a Member State acts in such a way it may dissuade foreign pension funds from investing in that Member State. Equally, it makes it more difficult for companies to attract capital from foreign pension funds.

According to EFRP, this situation is not justifiable and breaches European Community law, in particular Article 56 EC Treaty on the free movement of capital.

Recent judgments of the European Court of Justice support this view such as the *Denkavit* case ([C-170/05](#)), in which the Court confirmed the principle that outbound dividends cannot be subject to higher taxation in the source State than domestic dividends. Despite these judgements, only a few Member States have amended their legislation accordingly so far.

The Commission's case reference numbers are: 2006/4102 (Czech Republic), 2006/4103 (Denmark), 2006/4095 (Lithuania), 2006/4108 (Netherlands), 2006/4093 (Poland), 2006/4104 (Portugal), 2006/4105 (Slovenia), 2006/4106 (Spain), 2006/4107 (Sweden).

Following up on the December 2005 complaint the Commission is still examining the situation in other Member States. This may result in the opening of further infringement procedures in the following months.

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## ***ABOUT THE EFRP***

The European Federation for Retirement Provision represents the various national associations of pension funds and similar institutions for pension provision. The EFRP has members in most EU Member States<sup>1</sup>.

To address the concerns of Central and Eastern European Countries – CEEC - it has established in October 2006 the CEEC Forum. Membership of this Forum is open to representatives of private pension institutions from EU-12 Member States that over the recent years have made multi-pillar pension reform.

EFRP membership at large consists of institutions for occupational (2<sup>nd</sup> pillar) retirement some of them also operating purely individual pension schemes (3<sup>rd</sup> pillar).

Most EFRP members in EU-15 are non-profit making associations. Members and beneficiaries are usually represented in their governance structures; many of them are managed on a paritarian basis between unions/employees and employers.

**73 million EU citizens** are covered for their occupational pension plan by EFRP Member Associations.

Through its Member Associations the EFRP represents € approximately **3,6 trillion of assets (2006)** managed for future occupational pension payments.

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<sup>1</sup> EU Member States: Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovakia, Spain, Sweden, UK.  
Non-EU Member States : Croatia, Guernsey, Iceland, Norway, Switzerland